IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 309 OF 2006

1. Rajendra Narayan Nijai, age 42 years
   Occup. working as Translators &
   Interpreter in the Small Causes
   Mumbai,
   Residing at B/202, New Siddhivinayak
   Housing Society, Nalla Sopara
   (West), Thane.

2. Sharayu Ravindranath Mane,
   Age 42 years, Occup. working as
   Translator & Interpreter in the
   Small Causes Court, Mumbai,
   residing at E-8, Janardhan
   Apartment, Shankar Ghanekar
   Marg, Dadar, Mumbai - 28. .. Petitioners

Versus

1. Chief Judge of the Small Causes
   Court, Mumbai, Dhobi Talao,
   Mumbai - 400 020.

2. Registrar,
   Small Causes Court, Mumbai - 2.

3. Registrar,
   High Court, Mumbai.

4. State of Maharashtra,
   Through the Secretary, Law &
   Judiciary Department, Government
   of Maharashtra, Mantralaya,
   Mumbai - 400 032.

5. A.R. Bhosale,
6. M.N. Thavi,
7. B.J. Purohit,
8. A.K. Deodhar,
9. V.G. Deshmukh,
10. S.K. Kaware,
11. N.V. Shah,
12. R.B. Gaonkar,
13. R.D. Sawant,
14. N.N. Marathe,
15. T.S. Purekar,
16. S.N. Tendulkar,
17. R.K. Kadam,

18. M.R. Gaonkar,]
19. Y.B. Prabhu,]
20. J.N. Shirsat,]
21. K.S. Bhatade,]
22. S.L. Choudhary,]
23. M.S. Chavan,]
24. A.R. Zende,]
25. S.S. Avtade,]
26. A.N. Jagnade,]
27. P.P. Dhage,]
28. D.S. Tambe,]
29. B.N. Chandurkar,]
30. N.G. Jagtap,]
31. S.B. Mankar,]
32. S.S. Tuljapurkar,]
33. P.S. Desai,]
34. P.S. Bendre,]
35. P. Vyavahare,]

All working in the establishment of]
Small Causes Court at Mumbai at]
Dhobi Talao, Mumbai - 2.] .. Respondents

Mr. P.G. Karande for the petitioners.

Mr. R.M. Sawant, Govt. Pleader for respondents No.1 to 4.

Mr. P.A. Chavan with Mr. A.A. Kochrekar for respondents No. 8 to 19.

Mr. Anil Kumar Joshi for respondent No.5.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 19TH APRIL, 2006

ORAL JUDGMENT. : [Per F.I. Rebello, J.]

. Rule. Heard forthwith.

2. The petitioners are employed in the office of the Small Causes Court, Mumbai, as translators and interpreters. They have filed the present Petition to challenge the selection of the respondents as Judicial Clerks. On 29th March, 2006, as a statement was made that respondents No.7 to 16 and 19 to 35 were not holding the post of Judicial Clerks, we had directed their names to be struck off. Learned counsel for the petitioners moved Notice of Motion No.194 of 2006 to recall that order. As the said submission was based on wrong information and some of the said respondents had also been appointed as judicial clerks we have recalled that order, by a separate order out order dated 29th March, 2006.

3. The first contention, as urged on behalf of the petitioners herein, is that they were seniors to those who were selected and being senior, they could not have been by-passed. A Provisional Seniority List had been put up by Circular dated 11th January, 2005, inviting objections from those who were aggrieved by the draft Seniority List. It appears that the petitioners and some others had filed the objections. It may not be necessary for us to deal with the said aspect of the matter considering the controversy that has arisen herein. From the reply filed by R.M. Palhade,

Registrar (Legal), High Court, it appears that the issue of seniority is pending before this Court in Writ Petition No.725 of 1998. The issue of inter-se seniority can, therefore, be decided in that Petition. In the instant case, however, that issue may not arise as there is no dispute that the petitioners and respondents No.5 to 19 as also respondents No.20 to 35 were working as translators and interpreters, which posts are the feeder posts to the post of Judicial Clerks. In terms of para 580 of the Civil Manual, particularly sub-para (ii)(a), it is provided that whenever vacancies are to be filled in by promotion, the District Judge shall consider thrice the number of eligible candidates/employees in accordance with their seniority. The number of posts which were available was 25. Three times the number would make it 75, whereas only 33 number of translators and interpreters were available for being considered for promotion to the post of Judicial Clerks, all of whom were considered. In other words, all translators and interpreters who were qualified had to be considered and were considered. In these circumstances, the inter-se seniority really would be of no consequence, except to the extent of the seniority in the promotional post. That can be subject to the final order that this Court may pass in the pending Writ Petition No.725 of 1998.

4. We may now deal with the issue of promotion. Our attention has been invited to para 580 of the Civil Manual. We are concerned with para 580(ii)(a) onwards. We will reproduce the same as it would be relevant for the purpose of our discussion.

> "(ii)(a) Whenever vacancies to be filled by promotion are available, the District Judge shall consider for promotion thrice the number of eligible employees according to their seniority.
>
> (b) The District Judge may, if for reasons to be recorded in writing, he considers it to be so desirable, appoint a Committee to subject the employees within the Zone of consideration to an appropriate test, and may also consider the result of such test.
>
> (c) While selecting an employee for promotion, the District Judge shall take into consideration :-
>
> (i) The entire service record, and more particularly annual confidential reports for the previous 5 years.
>
> (ii) Leave and punctuality record, for the previous 5 years.
>
> (iii) Special reports called from the officers under whom the employees within zone of consideration.
>
> (d) In case promotions are not made according to seniority a minute indicating reasons for selection shall be recorded by the District Judge."

. Similarly, we may mention that in terms of para 625 of the Civil Manual, two examinations have to

be held, called the Lower Standard and Higher Standard Examination. In order to be considered to the post of Clerk, the candidate has to pass the Lower Standard Examination. We need not deal with the lower post. Insofar as to the higher post of Sheristedar, Assistant Superintendent and above, the Clerk must pass the High Standard Departmental Examination and for promotion to the post of Senior Clerk, Lower Standard Departmental Examination. We will again not be dealing with that aspect of the matter as there is no dispute that though both the petitioners and the respondents, who have been promoted as Judicial Clerks, have passed the Higher Standard Departmental Examination.

5. The contention, as urged on behalf of the petitioners is that till May 2005, no promotions were done to the post of Judicial Clerk in the establishment of the Small Causes Court. There were 17 vacancies of Judicial Clerks and 33 eligible candidates were interviewed. It is pointed out that there were two interviews conducted and consequently, the second interview would be in violation of para 580 of the Civil Manual. There are some averments as to the promotion of some of the respondents in the feeder posts, without having passed the Higher Standard Examination or Lower Standard Examination. We are again not really concerned

with the same as there is no dispute that the 33 candidates who were called for interview had passed the necessary examination and were eligible to be considered, when the Committee met to consider the promotions.

6. In the reply filed on behalf of the respondent-authorities, it has been pointed out that the promotions were done by the Chief Judge in accordance with the provisions contained in para 580 of the Civil Manual. After having appointed a Committee, the Committee, it is pointed out, sent for the necessary service records, service books, annual confidential records, leave records, punctuality reports, warning registers, departmental enquiry registers, departmental examination results, daily work-sheets, gradation list etc. from the Registry and after considering all the material, the Committee recommended the names of eligible candidates to the Chief Judge. The Committee also conducted interview for assessment of each candidate and after so assessing, the Committee recommended the names of eligible candidates. It is pointed out in answer to the averments in paragraph 14 of the Petition that employees working as translators and interpreters were required to discharge duties as Judicial Clerks in the absence of regular Judicial

Clerks as and by way of stopgap arrangement.

7. Shri Vinod G. Deshmukh, respondent No.9, has filed a reply on behalf of respondents 8 to 19. It is pointed out that the petitioners had participated in the selection process and after being unsuccessful in getting promotion, have challenged the promotions. As they had participated in the selection process, they are now estopped from challenging the same. Respondents No.20 to 28 have also filed their reply through Shri Durgadas S. Chaudhary. The said respondents are working as translators/interpreters. It is pointed out that respondents No.20 to 28 have passed both Lower Standard Departmental Examination, as well as, Higher Standard Departmental Examination and also fulfill the requisite minimum service conditions after passing the Higher Standard Departmental Examination. It is pointed out that the contention of the petitioners that as they had passed the oral examination of 100 marks when they passed the Higher Standard Departmental Examination, and therefore, there was no need for taking interview for a second time is contrary to para 580 which requires that the Selection Committee, amongst others, has to interview the candidates. It is also pointed out that for filling in the post in terms of para 580, three times the number of candidates have to be called. As

there were 25 posts of translators/interpreters, there was no illegality in the same. Similarly, an Affidavit has been filed by Aparna R. Bhosale, respondent No.5, serving as Judicial Clerk. It is reiterated that all 33 translators and interpreters who were eligible and under the zone of consideration and had passed the Higher Standard Departmental Examination and had put in requisite years of service were in the list of candidates according to their seniority. The Selection Committee, after duly following the procedure as set out in para 580 of the Civil Manual, has made the selection.

8. A Rejoinder has been filed by Shri Rajendra N. Nijai, petitioner No.1. The petitioners have again made a grievance about the earlier promotions which were made. At the outset, it may be pointed out that we do not propose to go into the issue of the earlier promotion as the petitioners had not challenged the promotions earlier and in these circumstances, those respondents having acquired a right in the post, we do not think it fit that such a challenge should be entertained at such a belated stage. Apart from that, the petitioners like the promoted respondents, were holding the posts of translators/interpreters on a regular basis. The only challenge we are considering is the challenge in the matter of appointment to the post

of Judicial Clerk.

8. We had called for the records of the Selection Committee to find out the criteria based on which the selection had been done. A similar challenge has also been raised in another Writ Petition No.612 of 2006 which was selection to the lower post of translators/ interpreters, which we are also deciding today. From the records we find that a marking system has been adopted only for the oral interview alone, and no marking system has been adopted insofar as the other criteria as set out in para 580, which we have reproduced earlier. In the absence of a marking system, it is not possible to know the basis on which candidates were selected and/or why, those who were senior, were not selected. Once a marking system had been adopted for the oral interview, it was necessary that a marking system had to be also adopted for the other criteria for the purpose of evaluation of the overall merit of the candidates. Though the chart prepared shows the records of each of the candidates, the record does not indicate any criteria based upon which the candidates i.e. both the petitioners and the selected candidates were competent to be assessed considering the criteria as set out in para 580 of the Civil Manual. In our opinion, this failure must result in holding the entire selection

as arbitrary. Once a marking system had been adopted for the oral interview, the respondent -authorities, considering para 580 of the Civil Manual, had also to adopt a marking system so as to allot marks under each head with greater weightage being given to annual confidential reports. In the absence of any such marking system and the basis of the evaluation, it will not be possible for us to sustain the appointments which have been made. In the light of that, the promotions of respondents No.5 to 18 is liable to be set aside. We direct the respondents to prepare a fresh merit list after fixing criteria for awarding marks under the various heads. The entire exercise to be completed within four months from today.

9. We may further make it clear that a reading of para 580 of the Civil Manual will indicate that the vacancies have to be filled in based on year-wise vacancies and cannot be bunched together. As an illustration, if there were five vacancies in the year 2003 then even if the Selection Committee meets in the year 2005, they will have to first consider the vacancies of the year 2003 and consider candidates three times the number for those vacancies. Those candidates selected will be placed at the top of the merit list, based on their overall merit. Those not selected will

then be considered for selection against subsequent vacancies, but according to merit along with others who may come in the zone of consideration, considering that the number of candidates are three times the number of vacancies.

10. Learned counsel for the respondents have relied on the judgment in the case of **Madan Lal & ors. Vs. State of Jammu & Kashmir, AIR 1995, S.C., 1080**. In our opinion that really would not arise as that was a case of direct recruitment. We are concerned with promotions. Merely because the candidate was called for interview and had participated in the interview would not debar them from contesting the selection done if that were contrary to the promotional rules.

11. In the light of the above, this Petition is disposed of by issuing the following directions:

(i) The issue of inter-se seniority is kept open to be decided, based on the decision in Writ Petition No.725 of 1998.

(ii) The promotions of respondents No.5 to 18 as Judicial Clerks is set

aside. However, they will continue to hold the post on ad-hoc basis till the fresh selection is made.

(iii) The entire exercise to be completed within a period of four months from today in terms of what we have stated in our judgment. The Selection Committee will consider year-wise vacancies and the zone of consideration will be limited to that extent.

. Rule made absolute accordingly. There shall be no order as to costs.

Sd/-
[F.I. REBELLO, J.]

Sd/-
[ANOOP V. MOHTA, J.]